

**BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
FOR THE CEMETERY AND FUNERAL BUREAU  
STATE OF CALIFORNIA**

In the Matter of the Petition for Reduction of  
Penalty By:

Case No.: A1 2012 369

**ANDREW WAYNE REEL**

Funeral Director License No. FDR 2450  
Cemetery Manager License No. CEM 239  
Crematory Manager License No. CRM 366

Petitioner.

**DECISION AFTER PETITION FOR REDUCTION OF PENALTY**

This matter came before the Director of the Department of Consumer Affairs (Department or DCA) for the Cemetery and Funeral Bureau (Bureau) by submission of a Petition for Reduction of Penalty, dated July 11, 2018, by Petitioner Andrew Wayne Reel. Petitioner seeks to have his probation terminated early. In accordance with Government Code section 11522, the parties were afforded an opportunity to submit written argument on or before September 7, 2018.

Petitioner's written argument in support of his petition was filed with the Bureau on September 4, 2018. On September 7, 2018, written argument in response to the Petition for Reduction of Penalty was filed by the Attorney General's Office.

The Director, having reviewed and considered the parties' evidence and written argument, hereby denies the petition.

**FACTUAL FINDINGS**

*License History*

1. On November 22, 2004, the Bureau issued Cemetery Manager License Number CEM 239, and Crematory Manager License Number CRM 366 to the Petitioner. On June 23, 2004, the Bureau issued Funeral Director License Number FDR 2450 to the Petitioner.<sup>1</sup>
2. Petitioner's Cemetery Manager license is currently active, and will expire on November 30, 2019, unless renewed. Petitioner's Crematory Manager License is active, and will expire on November 30, 2018, unless renewed.

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<sup>1</sup> Petitioner does not seek reinstatement of his Funeral Director's license with the current petition.

3. On October 24, 2012, the Bureau filed Accusation number A1 2012 369 (Accusation), against Petitioner and Advanced Care Funeral and Cremation Services (Advanced Care). The Accusation alleged that: (a) Petitioner aided and abetted the unlicensed practice of a funeral director; (b) committed multiple acts of unprofessional conduct in the practice of funeral directing, including gross negligence and gross incompetence by failing to complete the disposition of human remains in a timely manner thereby allowing decomposition of decedents; (c) failed to timely file death certificates; (d) failed to timely obtain permits for disposition; (e) failed to maintain Bureau approved storage and preparation facilities; and (f) failed to provide written or printed memorandums or contract for services.

4. On November 1, 2013, Petitioner entered into a Stipulated Settlement and Disciplinary Order (Order) with the Bureau. In the Order, Petitioner admitted the truth of each and every charge and allegation in the accusation. Conversely, the Order found "Circumstances in Mitigation" in that once Petitioner became aware that human remains which had been entrusted to Advanced Care were being left in storage and not being properly disposed of, Petitioner made cremation and/or funeral arrangements at his own expense and provided for the proper disposition of these human remains.

5. On January 16, 2014, the Director adopted the November 1, 2013, Order. Pursuant to the terms of the Order, Petitioner's funeral director's license was ordered revoked and his cemetery manager and crematory manager licenses were placed on five years' probation, subject to various terms and conditions, effective January 31, 2014.

#### *Petitions for Penalty Relief*

6. On August 16, 2015, Petitioner submitted his initial Petition for Reduction of Penalty to the Bureau, seeking reinstatement of his revoked funeral director's license. In addition, Petitioner sought to terminate probation of his cemetery manager and crematory manager licenses, or in the alternative, either a waiver or reduction of the \$1,551.25 ordered in cost recovery. On March 18, 2016, the Director of DCA denied the petition in its entirety.

7. On July 11, 2018, the Bureau received a second Petition for Reduction of Penalty from the Petitioner. In the instant petition, Petitioner attached several training certificates to his petition, in support of his rehabilitation. The petition requests in pertinent part, the following relief:<sup>2</sup>

With sincere appreciation of your time, I would like to respectfully petition to end my probationary period and to reinstate my Crematory Manager (CRM-366) and Cemetery Manager (CEM-239) licenses.

¶...¶

Since the start of this probationary period, I have fully complied with all probationary terms to include full payment of all cost recovery fees due. Additionally, attached are certificates of over 40 trainings that I have completed that encompass training of analytical skills, critical thinking skills, completed staff work, project planning,

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<sup>2</sup> Petitioner's petition is set forth without edits for spelling, grammar, and punctuation.

project management, principles of government, writing, collaborative negotiation, proper documentation, interpersonal skills and Microsoft Office Suite programs.

¶...¶

I ask for you to graciously review and approve my request. In the interim, I will continue to abide by the set terms and requirements of my probationary period throughout your review.

8. By way of his September 4, 2018, written argument, Petitioner claims to be rehabilitated and to have taken his disciplinary probation seriously. His written argument also provides, in pertinent part, as follows:

During this probationary period, I have worked hard and honorably within the funeral industry part time, and on a regular basis serving client families, working funeral services, and selling cremation and burial prearrangements for Sierra View Funeral Chapel (FD-924), Affordable Cremation & Burial Center (FD-1665), Angel Care Cremation and Burial (FD-1806, All Seasons Burial & Cremation (FD-2208), and All Seasons Funeral Chapel (FD-2205). I do not have a criminal record and I have not committed any subsequent acts that would be considered as grounds for denial under Section 480 of the Code.

¶...¶

I deeply regret ever having my licenses revoked. The 2001 death of my mother dying in my arms, while suffering a massive heart attack is what prompted me to work in the funeral industry... The funeral home that took care of my family during the sorrowful time was kind to me and my family... It has nearly been 16 years now that I have been working either full time, part-time, or on-call within the funeral industry and it has been heartbreaking for me to know that I have lost my licenses. I made mistakes and have learned from this experience; I will pass these lessons onto my children so that they do not make the same errors.

9. Petitioner has complied with the terms and conditions of his disciplinary probation, including full satisfaction of cost recovery and the completion of an ethics course. Petitioner's probationary term is set to be completed on January 31, 2019.

10. On September 7, 2018, Deputy Attorney General (DAG), Jeffery M. Phillips, timely filed written argument in response to the Petition for Reduction of Penalty with the Bureau. The written argument submitted by DAG Phillips did not offer a recommendation as to whether Petitioner's request for penalty relief should be approved or denied.

### **LEGAL CONCLUSIONS**

#### *Burden/Standard of Proof*

1. Government Code section 11522 provides, in pertinent part, the following:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. . . . The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement.

2. Business and Professions Code section 7601.1 states:

Protection of the public shall be the highest priority for the Cemetery and Funeral Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

3. In a proceeding for the termination of probation, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and is entitled to have his licensed restored, and not on the Bureau to prove the contrary. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal. App. 3d 1392, 1398.) Petitioner carries the burden to establish by clear and convincing evidence that he is entitled to the requested relief. (*Ibid.*) "The amount of evidence of rehabilitation required to justify admission varies according to the seriousness of the misconduct at issue." (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1086 (dis. opn. of Lucas, C.J.)) The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be. (*In re Menna* (1995) 11 Cal.4th 975, 987; see *In re Nevill* (1985) 39 Cal.3d 729, 735; *Roth v. State Bar* (1953) 40 Cal.2d 307, 313; *In re Gossage* (2000) 23 Cal.4th 1080, 1096.)

4a. Petitioner applied for a reduction in penalty pursuant to Government Code section 11522. Nonetheless, the Bureau's regulations governing license reinstatement under section 11522 are instructive here. California Code of Regulations, Title 16, section 1253.5, subdivision (b) provides the following:

When considering a petition for reinstatement of a license under the provisions of Section 11522 of the Government Code, the bureau shall evaluate evidence of rehabilitation submitted by the petitioner considering those criteria specified in Section 1253 of this article.

4b. The criteria specified in Title 16, section 1253 are:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Business and Professions Code.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(d) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.

5a. The allegations against Petitioner which led to his five year disciplinary probation, and the revocation of his Funeral Director's license were severe in that they harmed seven consumers and their end-of-life care needs. However, Petitioner has complied with the terms and conditions of his disciplinary probation and has not committed any subsequent acts that could serve as grounds for denial since the imposition of discipline on January 31, 2014.<sup>3</sup> (See Factual Finding 9.) In addition, Petitioner's misconduct cited in the Accusation occurred between February 2012 and September 2012, more than six years ago.

5b. The Director is mindful and acknowledges that Petitioner is making efforts and strides towards putting this most unpleasant episode behind him. Petitioner's actions are to be commended. On the other hand, since persons under the direct supervision of judicial or correctional authorities must behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage, supra*, 23 Cal.4th 1080,1099.)

6a. Rehabilitation is not an event but rather a process. It is a concept that must be evaluated and assessed on multiple levels. To that end, what is not attached to Petitioner's request for penalty relief is also significant. Specifically, Petitioner did not submit professional or character reference letters with his petition demonstrating his changed behavior and reliability that would assist the Director in determining his rehabilitation. There were no letters of recommendation from supervisors or co-workers attesting to his professional qualities. Rather, Petitioner submitted a number of training certificates with his petition which are unrelated to the practice of a cemetery or crematory manager, the professions regulated by the Bureau. While Petitioner asserts he has completed "over 40 trainings," he has failed to identify any particular training or describe any particular activity that he has engaged in which would buttress his position that he is a viable candidate to re-enter the profession as a cemetery or crematory manager without restrictions.

6b. Furthermore, a condition precedent for establishing rehabilitation is a mature understanding of the harm done and remorse for one's actions. Quite simply, one must accept responsibility for the misconduct and demonstrate an appreciation for why it is wrong. Petitioner's narrative, set forth in his written argument, leaves the Director less than convinced that he is truly remorseful. (See Factual Finding 8.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal. 3d. 933, 940.) Indeed, Petitioner has failed to articulate how he has learned from his past misconduct and failed to express a true appreciation for the gravity of his actions. In particular, there is no

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<sup>3</sup> Petitioner has completed more than four and one-half years of his five year disciplinary probation without further incident.

mention in either Petitioner's July 11, 2018, petition or his September 4, 2018, written argument, reflecting on the harm done to the consumers or their loved ones.

7. Accordingly, Petitioner has failed to exhibit a mature understanding of the harm done which led to the revocation of his funeral director's license, and the imposition of his disciplinary probation. He has continually stressed how heartbreaking and inconvenient his probation is to him. Nonetheless, the opportunity at a second chance has long and deep roots in our culture and law. But the opportunity at a second chance does not come automatically, simply earned with the passage of time. Rather, we must all earn our second chance. This is the core notion of rehabilitation. While Petitioner's probation may be burdensome to him, the Bureau's paramount duty is the protection of the public. In the instant matter, Petitioner has failed to meet his evidentiary burden by clear and convincing evidence, and cause exists to deny the petition.

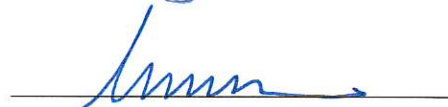
Upon successful completion of probation, Petitioner's Cemetery Manager and Crematory Manager licenses will be fully restored. Petitioner's Funeral Director's license shall remain revoked.

### ORDER

The Petition for Reduction of Penalty filed by Petitioner Andrew Wayne Reel, is hereby **DENIED**.

This decision shall become effective on January 9, 2019.

DATED: Dec. 10, 2018.



GRACE ARUPO RODRIGUEZ  
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Legal Affairs Division  
Department of Consumer Affairs